

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Medical Home of Rhode Island, Inc.

File Nos.: WP-12-94 and WP 12-076
and RIPDES RI0020168

AAD No.: 13-001/WRE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Medical Homes of Rhode Island, Inc. (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the alleged violations of the Consent Agreement executed between the RIDEM and the Respondent on 24 April 2012, the alleged violations set forth in a Notice of Violation ("NOV") issued to the Respondent by the RIDEM on 21 November 2013, and the alleged freshwater wetland violations first identified by the RIDEM on 21 January 2014.

B. STIPULATED FACTS

- (1) WHEREAS, a wastewater treatment facility was located at 49 Old Pocasset Road in the town of Johnston, Rhode Island (the "Facility").
- (2) WHEREAS, on 18 May 2011, the RIDEM issued to the Respondent Rhode Island Pollutant Discharge Elimination System ("RIPDES") Permit No. RI0020168 (the "Permit"). The Permit authorized the Respondent to discharge treated sanitary wastewater from the Facility into an unnamed stream in accordance with discharge limits (the "Permit Limits").
- (3) WHEREAS, the Respondent requested an administrative hearing to contest the Permit (the "Permit Appeal").
- (4) WHEREAS, on 24 April 2012, the RIDEM and the Respondent executed a Consent Agreement to resolve the Permit Appeal (the "2012 Agreement"). The 2012 Agreement required the Respondent to submit an engineering study on how it would come into compliance with the Permit Limits, including options to upgrade the Facility, install an onsite wastewater treatment system, or connect to the Town of Johnston sewerage system.

- (5) WHEREAS, on 29 April 2013, the Respondent's engineer submitted a report and plans to the RIDEM that identified connection to the Town of Johnston sewerage system as the chosen option.
- (6) WHEREAS, on 24 May 2013, the RIDEM issued an approval to the Respondent to complete the work to connect to the Town of Johnston sewerage system (the "Approval") by 13 September 2013 (the "September Deadline").
- (7) WHEREAS, on 26 August 2013, the Respondent's legal counsel submitted a letter to the RIDEM requesting an extension of the September Deadline to 31 December 2013 (the "Extension Request").
- (8) WHEREAS, on 18 September 2013, the RIDEM issued a letter to the Respondent approving the Extension Request (the "December Deadline").
- (9) WHEREAS, on 21 November 2013, the RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's *Water Pollution Act*, the RIDEM's *Water Quality Regulations*, and the RIDEM's *Regulations for the Rhode Island Pollutant Discharge Elimination System* pertaining to the Permit.
- (10) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (11) WHEREAS, on 27 December 2013, the Respondent's legal counsel submitted a letter to the RIDEM requesting an extension of the December Deadline to 13 May 2014 (the "Second Extension Request").
- (12) WHEREAS, on 7 January 2014, the RIDEM issued a letter to the Respondent denying the Second Extension Request.
- (13) WHEREAS, on 21 January 2014, the RIDEM performed an inspection in response to complaints concerning the clearing of trees. The inspection revealed unauthorized alterations to freshwater wetlands associated with the Approval (the "Wetland Violation").
- (14) WHEREAS, on 14 March 2014, the RIDEM issued Insignificant Alteration Permit No. 14-0017 to the Respondent to alter freshwater wetlands associated with the Approval and to restore the unauthorized altered wetlands (the "Wetlands Permit").
- (15) WHEREAS, on or about 24 September 2014, the Respondent completed all work associated with the Approval and the Wetlands Permit.
- (16) WHEREAS, on 9 January 2015, the RIDEM issued a letter to the Respondent terminating the RIPDES Permit.
- (17) WHEREAS, on 9 April 2015 and 15 May 2015, the RIDEM received notarized affidavits from Kyle Naylor, the Respondent's Vice President of Operations and Akshay T. Talwar, the Respondent's CEO and owner, respectively (collectively, the "Affidavits").

- (18) WHEREAS, the Affidavits state that neither the Respondent nor its corporate officers had any involvement in the Wetland Violation.
- (19) WHEREAS, the RIDEM alleges that stipulated penalties have accrued against the Respondent in accordance with paragraph 7 of the 2012 Agreement for its failure to comply with the December Deadline (the “Stipulated Penalties”).
- (20) WHEREAS, in lieu of issuing a separate enforcement action against the Respondent for the Wetland Violation, or of proceeding to an administrative adjudicatory hearing on the NOV, or of proceeding to Superior Court to enforce the Stipulated Penalties and to effect a timely and amicable resolution of the Wetland Violation (**as it pertains solely to the Respondent**), the NOV and the 2012 Agreement, the RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised.
- (21) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with State law and the RIDEM’s regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. and R.I. Gen. Laws Section 42-17.7-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
 - (a) The Respondent shall provide assistance and cooperate in good faith in any enforcement proceedings initiated by the RIDEM against one or more third parties responsible for the Wetland Violation, including, but not limited to, appearing to testify in enforcement proceedings in the event the RIDEM determines such testimony to be necessary.

(b) Penalty – The Respondent shall pay to the RIDEM \$7,500 in administrative penalties assessed as follows:

(i) **Upon execution of this Agreement by the Respondent**, the Respondent shall pay to the RIDEM \$7,500.

(ii) Penalties that the Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

(iii) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

D. COMPLIANCE

(1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues associated with the Wetland Violation (**as it pertains solely to the Respondent**) and raised in the NOV and the 2012 Agreement. Upon the Respondent’s successful completion of the requirements set forth in this Agreement, the RIDEM shall release and discharge the Respondent with respect to any claims, actions or violations related to the Wetland Violation, the NOV and the 2012 Agreement.

(2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.

(3) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, the RIDEM reserves the right to take additional enforcement actions as provided by statute or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.

(4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.

(5) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV, the 2012 Agreement and the Wetland Violation.

- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Chief
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7400

Gary Powers, Deputy Chief Legal Counsel
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2308

William L. Landry, Esquire
Blish & Cavanagh LLP
Commerce Center
30 Exchange Terrace
Providence, RI 02903-1765
(401) 831-8900

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (7) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For Medical Homes of Rhode Island, Inc.

By: _____

Print Name: _____

Title: _____

Dated: _____

In my capacity as _____ of Medical Homes of Rhode Island, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Medical Homes of Rhode Island, Inc. to satisfy any obligation imposed upon it pursuant to said Agreement

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2015, before me personally appeared _____, the _____ of Medical Homes of Rhode Island, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Medical Homes of Rhode Island, Inc., and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of Medical Homes of Rhode Island, Inc.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental Management

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____